



To: European Commission
Directorate-General for Competition, Unit B3

From: DAMCO Aluminium Delfzijl (Aldel)

Date: 9 march 2020

Subject: Response to the consultation on the draft ETS State aid Guidelines (HT.582)

Introduction

1. Damco Aluminium Delfzijl Coöperatie U.A. (ALDEL) is an aluminium plant based in Delfzijl that concentrates on the production and trading of high quality aluminium and aluminium products, employing around 350 people. Aldel qualifies as an electro-intensive company (one of the biggest in the Netherlands) as it uses up to approximately 1,5% of the total Dutch electricity consumption.
2. Due to its unique properties and (energy-efficient) uses in products, such as buildings and vehicles, aluminium is one of the best suited materials to realise the transition towards carbon neutrality. Improvements in the production process have led to a major decrease of the carbon intensity of primary aluminium production in Europe, further positioning aluminium as a key element in the (European) energy transition.
3. However, the EU's aluminium production represents only a fraction of production globally. Approximately half of the EU's demand for aluminium has to be imported, a large percentage of which comes from sources that are not regulated by CO₂ -emission reducing systems like the ETS and are much more carbon-intensive. In the past five years alone, the import of Chinese aluminium products to the EU have more than doubled, with China being responsible for around 57% of production globally. We can clearly see that carbon leakage is not a threat but a reality in the European aluminium sector, with Europe having lost 1/3 of its primary production capacity in the last decade. Now, only 16 primary smelters remain in the EU.
4. In an effort to partly recuperate losses due to carbon leakage, the European Commission has adopted ETS State aid Guidelines in 2012 which resulted in numerous Member States implementing compensation schemes for indirect emissions costs. As aluminium has one of the most electro-intensive production processes, Aldel is highly dependent on the Dutch State aid scheme for compensation of these indirect costs. Without a just compensation scheme, Aldel will be fully exposed to the genuine risk of carbon leakage and will not be able to cope with competition from more polluting aluminium producers outside of the EU that do not have to face a carbon cost in their electricity price.



Revision of the Emission Trading System State aid Guidelines

5. Against the aforementioned, it is vital firstly that there are guidelines that allow for adequate compensation measures to protect against carbon leakage, and secondly that there is harmonisation of the ETS Directive among Member States by implementing compensation schemes to maintain a level playing field in Europe.
6. With regard to the latter, we must note that distortions in the internal market will increase if different Member States decide to compensate electro-intensive industries to varying degrees, or if some Member State decide to compensate whilst others don't – leading to a further distortion of the level playing field within the EU. Therefore, it is of the utmost importance to restore the level playing field in Europe through harmonisation of the ETS Directive among all Member States. The industry of the EU would only be truly protected from carbon leakage (insofar possible through just a compensation scheme) if all Member States with electro-intensive industries that are carbon leakage exposed adopt the new Guidelines and implement/continue a compensation scheme for phase IV of the ETS.

Comments on the draft ETS State aid Guidelines

7. Aldel welcomes the revision of the ETS State aid Guidelines and is pleased to see that the European Commission has taken to heart our recommendations for the revision submitted in the previous consultation rounds. There remains a continued need for compensation for the sectors most affected by the indirect emissions costs and most exposed to carbon leakage. Hence, compensation for indirect costs must remain available in phase IV of the ETS.
8. Nevertheless, we would like to comment on a number of paragraphs of the draft Guidelines that we feel need adjustment (or further clarification) to allow for effective compensation to companies without imposing additional conditions that counteract such effective compensation. As phase III of the ETS is about to end – and with it the currently implemented compensation schemes – it is crucial that the Guidelines are finalised as soon as possible, as we must note that the legislative processes for implementing/continuing compensation schemes in Member States may take a long time.

Paragraph 14 (10) - CO₂ emission factor

9. In the formula used to calculate compensation, one of the variables is the emission factor which reflects the production mix of the fossil fuels in the given geographic area. In the 2012 Guidelines, "Central-West Europe" was taken as a single geographical area with a single emission factor for all countries included in the area (Austria, Belgium, France, Germany, the Netherlands and Luxembourg). As a result, companies located in one of the countries that are more CO₂ intensive than the weighted average of them all unfairly received inadequate compensation, and vice versa for companies located in less CO₂ intensive countries.



10. Therefore, the new (more specific) division of geographical areas in which the average of the CO₂ intensity of electricity produced from fossil fuels will be weighted is a positive development. Due to this adjustment, the required compensation per area can be calculated more precisely, reinforcing effective climate policy.
11. As the method for calculating the specific CO₂ emission factors per country/region is currently not clear, we urge the European Commission to share this information.

Paragraph 14 (11-12) – Actual output & actual electricity consumption

12. We encourage the adjustments to use the ‘actual output’ in tonnes per year and the ‘actual electricity consumption’ in MWh instead of using the ‘reference baseline output’ and the ‘reference baseline electricity consumption’. By using current data, it is possible to calculate more accurately the actual indirect costs incurred and hence the need for compensation. Use of the actual numbers will be especially fair to those companies that are scaling up their businesses, such as Aldel.

Paragraph 25 – Moment of payment

13. The Guidelines allow for payment in the same year as the costs are incurred. In the Netherlands, compensation is granted almost a year later than the costs were actually incurred ($t + 1$). This leads to severe limitations on investment opportunities as the companies themselves have to finance the indirect costs incurred due to the ETS, only being compensated (more than) a year later.
14. Aldel therefore favours the allowed method that grants compensation up front, with an ex post adjustment mechanism to remedy any over- or undercompensation. With regard to this measure, we acknowledge and support the standpoint of introducing the new criterium for eligibility in paragraph 9 of the Guidelines, namely that aid may not be awarded to firms in difficulty. It is perfectly reasonable not to grant compensation to companies who are already in financial difficulty (under the ‘pay today, correct ex post’ method). However, this new criteria would not make any sense when compensation is granted a year after they are incurred. In this scenario, the (indirect emissions) costs have already been made – compensation is therefore owed to the company irrespective of financial status and should therefore still be granted.
15. In the light of the above, we strongly urge the Commission to promote the ex-post payment adjustment mechanism and/or to readjust paragraph 9 by adding that no compensation may be withheld by Member States if they opt for a compensation scheme in which compensation is granted afterwards.



Paragraph 26 - Aid intensity

16. It is essential to fully and effectively combat the risk of carbon leakage by compensating companies to the necessary extent for the indirect costs incurred. In this regard, we are pleased to see that a degenerative nature will no longer be inherent to the aid intensity as a factor for calculating compensation.
17. Nonetheless, since direct emission costs are compensated up to 100% of the benchmark, only allowing for a maximum of 75% of the incurred indirect costs to be compensated is not in line with consistent and just policy. In paragraph 26 of the draft Guidelines it is mentioned that the aid is proportionate if it does not exceed 75% of the indirect emissions costs incurred. However, evidence to support this statement is lacking and we urge to increase the aid intensity to a higher percentage. Again, there is no justification underlying the differentiation in the level of compensation granted for direct and indirect costs.
18. We understand that there must be an incentive to disseminate the most energy-efficient technologies, but this incentive already follows from the 2025 actualisation of the efficiency benchmarks and the proposed annual adjustment. With regard to the latter, we would like to point out that investments into energy efficiency need time to be implemented. In that regard, an actualisation in 2025 would better reflect the necessity of time to make investments that increase a site's energy efficiency, instead of a yearly adjusted benchmark which would reduce the amount of compensation received by the same percentage.
19. With respect to the above, we would like to emphasise that the main goal of the Guidelines is to compensate companies in an effort to combat carbon leakage. Legislation already exists which encourages the use for more energy-efficient techniques. For example, in the Netherlands, companies need to adhere to certain energy-efficiency covenants and take any measure for which the payback time does not exceed five years – this is also a criteria to be eligible for compensation for indirect emissions costs. Companies therefore already take every possible measure to reduce electricity consumption. A compensation scheme for indirect emission costs should not pose new responsibilities on companies to invest into energy-efficiency, as this is not the goal of compensation. The goal is, and always must be, to compensate companies for the incurred indirect emissions costs in an effort to combat carbon leakage. The compensation should therefore reflect the real incurred costs. For this purpose, using the benchmark as a factor in the calculation works – capping the aid intensity does not.

Paragraph 30 & 31 – Limitation of indirect costs

20. Even though the list of sectors eligible for compensation has been greatly reduced to those sectors that truly are at risk of carbon leakage, there might still be some sectors or companies



that will be more exposed to carbon leakage than others. As the European Commission also states, these sectors or companies may not be sufficiently protected by the 75% cap on compensation and might need additional compensation to ensure that carbon leakage will not occur.

21. Therefore, the new provision that calls upon Member States to implement a new measure that limits as a function of its gross value added of the company the amount of indirect costs that may be incurred by that specific company, is an inevitable development. However, the draft Guidelines offer few specifics what this measure should look like.
22. The report accompanying the revision of the Guidelines¹ presents figures on the use of a limitation of indirect costs as a function of a company's GVA. The figures clearly show that numerous sectors are much more affected by indirect costs than other sectors. We may observe that the aluminium sector is one of these sectors for which indirect costs pose the largest share of GVA (up to 2% after 75% compensation at a carbon price of € 35/tCO₂).² As follows from the data, different combinations of the aid intensity percentage and the GVA restriction may lead to different outcomes. Whichever combination may be opted for, the interests of those sectors most exposed to carbon leakage have to be taken as the primary object of protection via this measure. Nonetheless, we urge not to limit state aid below 100%: compensation for indirect costs has to be maximally available for companies and those companies that are disproportionately affected by the indirect costs have to be protected through an additional measure, such as the proposed limitation as a function of the company's GVA.

Paragraph 53 & 54 – Energy audits and management systems

23. Aldel believes that there should be some form of reciprocity with regard to the compensation received. In this regard, we welcome the newly proposed option as mentioned in paragraph 54 (a) whereby Member States commit to monitor whether beneficiaries *'implement recommendations of the audit report, to the extent that the payback time for the relevant investments does not exceed [5] years and that the costs of their investments is proportionate'*. In fact, similar measures already exist in the Netherlands: a condition to receive compensation is to be a signatory to one of the two energy efficiency covenants in the Netherlands and to report on the progress of the company's adopted energy efficiency plans. This condition has proven to be effective without imposing insurmountable obligations on companies.

¹ "Combined retrospective evaluation and prospective impact assessment support study on Emission Trading System (ETS) State Aid Guidelines". See [here](#).

² Please see p. 45 onward.



24. With regard to the two alternative options given in paragraph 54, we must note that these ((b) and (c)) are too demanding for companies that are already at risk of carbon leakage. The proposed options are not in line with the main goal of this guideline, namely to compensate companies for incurred indirect costs. To invest a significant share of at least 80% of the aid received in projects that lead to GHG emissions reductions (sub c) completely undermines the idea of being compensated for the incurred indirect emissions costs. The measures stated in paragraph 54 (b) and (c) would therefore lead to these companies not receiving adequate compensation, totally undermining the goal of any compensation scheme.
25. We urge the Commission to revise paragraph 54 of the draft Guidelines by rethinking sub b and sub c since these measures are disproportionate against the goal of compensating companies. The option given in paragraph 54 (a) already has a proven record in the Netherlands as an effective trade-off, on top of the many other nationally implemented measures that incentivise energy-efficiency. In this regard, we suggest that companies obtain the internationally recognised ISO 50001 certification for Energy Management in order to be eligible for compensation. Certification assures the company is taking necessary energy efficiency measures and will continue to adhere to stay energy efficient. Hence, making such certification obligatory to receiving compensation would provide a sufficient incentive for companies to invest in becoming more energy efficient - whilst not placing a disproportionate burden on the companies. And both the ETS system and the compensation system work by a benchmark which in itself already is an intrinsic incentive for improvement due to the gap against the benchmark outcome.

Annex I - sectors

26. The goal of the compensation measures following the ETS Directive is to compensate those sectors that are exposed to a genuine risk of carbon leakage. Furthermore, such form of state aid must be limited to the minimum needed to achieve this goal. In that regard, Aldel welcomes the narrowing down of the list of sectors that are eligible for compensation as presented in Annex I.
27. The new list better reflects the sectors truly exposed to carbon leakage and will therefore also have minimal negative effects in terms of distortions of competition in the (internal) market.

Conclusion

28. Aldel welcomes the revision of the ETS State aid Guidelines and is glad to see that the European Commission continues to recognise the need for compensation of those industries most exposed to carbon leakage. Nonetheless, to combat carbon leakage in the most effective way possible, it is necessary to review some of the provisions of the draft Guidelines. Therefore, we call on the Commission to take into consideration the recommendations and suggestions made here.



29. Lastly, we once again want to emphasise the importance of harmonisation of the ETS Directive among all Member States. If only some Member States will implement a compensation scheme, whilst others won't, there will be a distortion of the internal market as well as a disruption of the level playing field. The goal of compensation is to combat carbon leakage whilst not distorting the level playing field within the EU. Only harmonisation between Member States can achieve both.